JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

No. 654

JIM BROWN HOLLIDAY and HARRINGTON MANUFACTURING COMPANY, INC.,
Petitioners

v.

LONG MANUFACTURING COMPANY, INC., LONG TOBACCO HARVESTING COMPANY, INC., and WILLIAM R. LONG,
Respondents

MEMORANDUM IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Careful consideration of the petition and the facts and circumstances involved fails to uncover any merit in the petition or any justification for the attack on the Court of Appeals of the Fourth Circuit and its decision which accurately interpreted the facts and correctly applied the law in the execution of its function in the administration of justice.

This is not a case in which there are conflicting decisions of different Circuit Courts of Appeals. It is not a case where there is a question of great public interest and of far-reaching importance. It is just a case

where a losing party is dissatisfied with the decision of a Circuit Court of Appeals. The fact that the appellate court gave careful and full consideration to all phases of the case is revealed by its 14-page decision (App. 15a-28a*).

There are many decisions which set forth the guiding legal principles on which this case was decided and apparently these are adequate since petitioners have not asserted that there is any need for others.

As noted by the Court of Appeals (App. 21a)

> "Claim 7 of the Holliday patent provides for vertical members secured to a frame, vertically extending conveyor chains carried by the vertical members and with means for adjustably suspending seats for workmen from the vertical members".

The District Court in its decision did not attribute to the word "vertical" its usual meaning of "perpendicular" or "upright" but, on the other hand, gave it a broader significance designating it a "random adjective" and indicating that the actual meaning was travelling from a lower to a higher elevation, and based its interpretation on its holding that the Holliday machine was a *pioneer* invention.

In making this interpretation there was no mention of the prior art and it is to be presumed that this was an oversight in view of the fact that prior art was in evidence in the record and was referred to in the pleadings of both parties.

The District Court acknowledged that in the farm implement art high clearance machines designed to

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* References are to the appendix to the petition unless otherwise noted.

pass over the tops of growing plants had long been used for detasseling corn, spraying, dusting, and harvesting, but stated that none had been made for tobacco harvesting (App. 3a). Mr. Long testified that in building his machine he purchased and started with a high clearance corn detasseling machine. No reference was made by the District Courts to prior art patents in the record including the prior art cited by the Patent Office over which the claim in question was allowed. In view of this prior art it was necessary for Holliday to restrict his claim, so consequently the terminology of the claim must be given its normal meaning, and the Court of Appeals so held.

The Court of Appeals stated (App. 22a)

> "Should there be any doubt from the language of claim 7 that Holliday used the terms 'frame' and 'vertical member' in contradistinction to each other, it is clear from the drawings and specifications that he did. He showed in his drawings and described in his specifications 'vertical members', carrying the conveyor chains and adjustable seats, which are not an integral part of the frame but are merely 'welded or otherwise secured to the transverse members' of the frame.
>
> The Long machine, as any box-like structure, has combinations of members through which, in a geometric sense, vertical planes may be passed. It does not have 'vertical members' in the sense that term is employed in the Holliday patent. The literal language of claim 7 of the Holliday patent cannot be read directly on the Long machine.
>
> An examination of the prior art convinces us that Holliday's machine was not a pioneer invention and that the restrictive language of the claim was employed advisedly in order to avoid the prior art."

The Appellate Court found that high clearance machines in the farm implement art designed to pass over the top of growing plants had long been used not only for detasseling corn but for spraying, dusting and tobacco harvesting and the Court mentioned the prior art patents to Stark et al. 1,275,781 (Joint Appendix 34 A, Long Exhibit 14), Whitley 2,518,965 (Joint Appendix 37 A, Long Exhibit 14) and Alphin 2,702,134 (Joint Appendix 30 A, Long Exhibit 13), and commented upon the fact that Holliday had seen a picture and knew of the Alphin high clearance tobacco harvester before he began working on his own machine.

The Appellate Court held that what Holliday did was to combine the well-known high clearance self-propelled platform with adjustable seats for the pickers of the Whitley patent, and then constructed the vertical chain conveyor with fixed spring-pressed clips for the inclined conveyor belts of the Alphin and Stark patents (App. 23a).

Unlike the District Court, the Appellate Court considered the prior art patents above noted and held (App. 23a) that the Holliday machine was not the first mechanical harvester with mechanical means for elevating material from a lower level to workers on a high clearance platform, nor the first specially designed for harvesting tobacco; that it was a combination of known elements subject to deficiencies of such consequence that it was never commercially produced; that the limited contribution of the Holliday machine does not warrant the broad construction urged, that to adopt such broad construction would extend the language of the claim far beyond the apparent intention of the inventor and raise grave doubt of validity in the light of the prior art.

The Appellate Court also held that Holliday was not entitled to claim the use of conveyors broadly for elevating tobacco leaves in view of the prior art; that quite properly Holliday restricted his claim to the particular conveyor system and the restricted language should not be expanded to preclude the use of other conveyor systems. The Court of Appeals reversed the District Court in holding that "vertical" was a random adjective and that Holliday had made a "pioneer" invention. The challenged decision is well worded, clear, logical and accurate and it indicates careful consideration of the subject matter by the Court of Appeals.

The petition charges that the Court of Appeals (1) lacked understanding of the facts, (2) failed to comply with Rule 52(a) of the Federal Rules of Civil Procedure, and (3) construed the patent claim literally and consequently incorrectly, thereby nullifying the protection which the patent is supposed to afford. In its argument, the petition refers to the District Court Judge, a native of North Carolina, as earthy, practical and familiar with the harvesting problems. This reveals the desperation and determination of petitioner but proves nothing. The presiding judge of the 4th Circuit Court of Appeals is a native, and apparently a lifelong resident, of North Carolina, familiar with the harvesting of tobacco, and of great experience on the Federal bench including in patent cases. The associate judge who wrote the decision is apparently a lifelong resident of South Carolina and likewise familiar with the harvesting of tobacco. The difference between the District Court and the Court of Appeals, in the consideration of the case, was that the Court of Appeals

noted the prior art which the lower Court apparently, at least momentarily, overlooked and thus removed the "pioneer" halo which the District Court placed upon Holliday by the holding that the word "vertical" was not restricted to its normal meaning.

The Court of Appeals, therefore, understood the facts. The charge that it failed to comply with Rule 52(a) is without merit because the District Court made a mistake and Rule 52(a) provides for correction where the findings are clearly erroneous and the Court of Appeals in correcting the error of the District Court complied with instead of violating this rule, the prior art evidence in the record clearly indicating the erroneousness of the District Court's holding that Holliday's was a "pioneer" patent.

The Court of Appeals has not nullified, changed, or limited the scope of the Holliday patent but has found that

> "an examination of the prior art convinces us that Holliday's machine was not a pioneer invention"

and that the restrictive language of the claim was employed necessarily or advisedly in order to avoid the prior art. (App. 22a).

This petition seeks to have the scope of the patent enlarged to an unwarranted breadth which the Court of Appeals did not find justified and refused to permit.

There is no indication of error presented by the Court of Appeals overturning the findings of the District Court which overlooked controlling evidence, but, on the other hand, there is a clear indication of full consideration of the facts and which facts and

evidence had a material bearing upon the issue, and the Court of Appeals corrected the oversight of the District Court.

There is no occasion justifying or requiring review of decision of the Court of Appeals of the Fourth Circuit and, therefore, it is respectfully submitted that the petition is without merit and should be denied.

Respectfully,

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